International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO (Kaiser Cement Corporation) *and* James Gilbert. Case 32–CB–3316

September 20, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Exceptions to the judge's decision in this case[1] present the question of whether the Respondent Union has violated Section 8(b)(1)(A) of the Act by threatening four dissident employee-members with enforcement of the union-security clause if these employees discontinued paying membership dues after the Respondent had imposed discipline on them that substantially impaired their membership rights.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified and to adopt the recommended Order.

The judge found that the Respondent did not unlawfully threaten to cause the Employer to discharge members James Gilbert, Donald Hall, Joseph Gaxiola, and Arthur Rose under the union-security clause if they discontinued paying membership dues. For the reasons fully discussed below, we adopt the judge's finding that the Respondent has not violated the Act here.

The record shows that before April 1984, Local 100 of the Cement, Lime, Gypsum and Allied Workers International Union (CL&G) represented the relevant bargaining unit employees at the Employer's Permanente, California facility. The collective-bargaining representative for all bargaining unit employees at that facility was the AFL–CIO Building Trades Council. In April 1984, CL&G merged with the Respondent and Local 100 became Local D-100 of the Respondent.

Charging Party James Gilbert served as the Local president both before and after the merger. Although Gilbert and other Local members had not favored the merger, it was not until 1986 that they began actively opposing the Respondent. Gilbert's dissatisfaction resulted in part from the Respondent's termination of four long term CL&G International representatives. On September 16, 1986, Gilbert wrote a letter to the Respondent's president, Charles W. Jones, asking that he reconsider the discharge of International Representative Kent Weaver. Jones refused.

Before the 1984 merger, the Employer had proposed removing four job classifications from the bargaining unit and making them nonunion. The membership voted to reject the proposal. During early 1987, Gilbert met with the Employer's officials to discuss the possibility of changing all 37 or 38 bargaining unit positions into nonunion salaried positions. No change in the unit composition resulted from these discussions.

In July 1988,[3] Gilbert prepared and circulated a petition to Local members stating:

> As members of Lodge D-100, employed at the Kaiser Permanente Cement Plant, we do not want the Boilermakers International Union to represent us and request an election by the NLRB to chose [sic] a new International Union to affiliate with.

All but one of the members signed the petition. Gilbert, however, did not submit the petition to the Respondent or file it with the Board.

On September 22, Gilbert conducted a membership meeting during which he presented a ''Letter of Understanding'' the Employer had prepared that would have removed 17 jobs, including Gilbert's, from the bargaining unit and made them salaried, supervisory positions. Although Gilbert testified that he did not favor dividing the bargaining unit, Gilbert repeated to the employees the benefits of the proposal as the Employer had represented them. Gilbert told the employees that pensions for supervisors were double those provided to unit employees under the collective-bargaining agreement. He also emphasized that the Employer had made a commitment that those employees remaining in the unit would receive preferential consideration for later vacancies in the 17 new supervisory positions created for former unit employees. Arthur Rose, who held no union office, attended the meeting and publicly expressed his support for the Employer's proposal. Donald Hall, who was the Union's financial secretary, also was present but took no position on this proposal. The employees eventually voted, 23 to 11, to reject the Employer's ''Letter of Understanding.''

About 2 weeks later, Joseph Gaxiola, an elected trustee for the Local, circulated a petition to the unit employees that sought to turn all the unit jobs into salaried positions and thereby eliminate this portion of the larger collective-bargaining unit represented by the AFL–CIO Building Trades Council. A majority of the unit employees opposed Gaxiola's petition.

[1] On June 20, 1990, Administrative Law Judge Michael D. Stevenson issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief to the General Counsel's exceptions.

[2] In the section of his decision entitled ''2. The Letter of Understanding,'' the judge found in the second and fifth paragraphs that James Gilbert, who then served as president of the Local Union, presented the Employer's proposed ''Letter of Understanding'' to the membership for their approval or rejection on September 9, 1988. The record shows, however, that the actual date was September 22 as the judge stated later in his decision.

[3] All dates are in 1988, unless otherwise noted.

About October 16, James Ellsworth, another unit employee, filed internal union charges against Gilbert, Hall, Gaxiola, and Rose. Ellsworth charged that Gilbert ''bargained with [the] company in order to disband the union and have the jobs [turned] into the salaried position [sic]''; that Hall and Rose ''aided'' or ''abetted'' Gilbert's ''illegal activities''; and that Gaxiola circulated a petition seeking to eliminate the bargaining unit. About December 19, the Respondent found the alleged discriminatees guilty of all charges. As discipline for his misconduct, the Respondent suspended Gilbert from union office, barred him from holding any union office for a period of 5 years, and prohibited him from attending union meetings for 5 years ''except a meeting at which a contract directly affecting him is to be voted upon.'' The Respondent imposed the same discipline on Hall except that it was for a period of 3 years. Gaxiola and Rose also received this discipline but for a 2-year period.

About April 24, 1989,[4] the four alleged discriminatees jointly wrote a letter to Charles W. Jones, the Respondent's president, stating their belief that the Respondent had ''in effect'' suspended them from union membership and that, therefore, they were no longer required to pay union dues. Jones responded by letter, dated May 22, in which he advised the four employees that the Respondent had not suspended them from membership and that they had an obligation to continue paying dues in order to remain members in good standing. On July 20, the four employees jointly sent Jones another letter inquiring about the penalties the Respondent would impose on them if they ceased paying dues. Jones subsequently replied on August 7 that the contract contained a union-security clause and that if the employees ceased paying union dues the Respondent would inform the Employer and ''you would no longer be allowed to work at the plant.''

The judge rejected the General Counsel's contention that the Respondent had unlawfully disciplined the four alleged discriminatees. He found that the Respondent had the right to protect itself against the alleged discriminatees' activities which would have resulted in the erosion or the elimination of the bargaining unit that the Respondent represented. Therefore, the judge concluded that the General Counsel had not established a prima facie case that the discipline violated Section 8(b)(1)(A).

The judge found that the Respondent also did not violate the Act by threatening to invoke the union-security clause. Because the alleged discriminatees were attempting to change either half or all of the bargaining unit jobs into supervisory positions, the judge found that the Respondent had a legitimate union interest in preventing the erosion of its status as collective-bargaining representative. He stressed that the present case is distinguishable from *Steelworkers Local 4186 (McGraw Edison Co.)*, 181 NLRB 992 (1970), in that the Board there found that the union had unlawfully threatened to invoke the union-security clause against a member whose membership it had significantly impaired because of the employee's protected conduct in filing a decertification petition.

The judge also rejected the General Counsel's alternate contention that even if the activities for which the Respondent disciplined the alleged discriminatees were not protected, the Respondent had so significantly reduced their membership rights that it could not lawfully enforce the union-security clause against these employees. The General Counsel's argument, in the judge's view, presented the Respondent with the ''Hobson's choice'' of either forgoing its right to discipline members under the proviso to Section 8(b)(1)(A) (thereby rendering the proviso to Section 8(b)(1)(A) a nullity) or relinquishing its right to enforce the provisions of a valid union-security clause (thereby ultimately self-destructing without the dues of disciplined members). The judge concluded that the General Counsel's position, if implemented, would induce any members who are unwilling to pay dues in the first place for financial or philosophical reasons to subject themselves to union discipline ''so they would be 'punished' by not having to pay union dues, although they would continue their employment.'' For these reasons, the judge dismissed the complaint.

Discussion

There are two actions involved herein: (1) the Union's internal discipline of certain employees, which discipline impaired their membership in the Union; and (2) the enforcement of a union-security clause against those employees, notwithstanding the fact that their membership was impaired.

These two matters are analytically distinct, although in a given case they may be related. If discipline is wholly internal, i.e., if it does not itself affect the employment relationship, the union may be able to impose the discipline even if it is aimed at a Section 7 right. For example, in *NLRB v. Allis-Chalmers, Mfg. Co.*, 388 U.S. 175 (1967), the Supreme Court held that a union could fine employee-members for exercising their Section 7 right to cross a picket line. In commenting on *Allis-Chalmers*, the Board has said:[5]

> The Supreme Court in *Allis-Chalmers* recognized that the right of collective bargaining is a paramount policy of national labor law, and that in order for a union to fulfill this obligation it must be able to promulgate its own rules and have the right to impose reasonable discipline on mem-

[4] All subsequent dates are in 1989.

[5] *Meat Cutters Local 593 (S & M Grocers)*, 237 NLRB 1159, 1160 (1978).

> bers who do not obey such rules. The Court further found that integral to this policy is the union's right to protect itself against the erosion of its status of collective-bargaining representative by reasonably disciplining members for violating internal regulations. [Footnote omitted.]

To be sure, there are limitations on the union's right to impose discipline on members. One of these limitations is that the employee-members must be free to resign their membership and thereby escape the rule.[6] That is, employees have a right to resign from the union. If they resign prior to engaging in the Section 7 conduct deemed offensive by the union (e.g., crossing a picket line), the union cannot discipline them. If they have opted for continued membership, they cannot be heard to complain if the union enforces the rules of membership.

There is another important exception to the general rule concerning a union's right to impose internal discipline on members. If the union's rule impairs a policy that Congress has embedded in the labor laws, the union may not enforce the rule, even against a member. Of course, as we have seen, the mere fact that the discipline is in reprisal for a Section 7 right is not sufficient to condemn the discipline. See *Allis-Chalmers*. However, if the Section 7 right is the fundamental one of seeking access to the Board, the discipline in reprisal therefor may be unlawful.[7] Thus, for example, if the employee files a petition or a charge with the Board, the union cannot fine him for that action.[8]

In the instant case, the employees were all members of the Union at the time that they engaged in the conduct deemed offensive to the Union. They were free to resign from the Union but they chose not to do so. Although they were members, they engaged in conduct designed to oust or undermine the Union in its role as representative of the employees. Thus, as discussed above, the Union was free to impose discipline on them. The fact that the Union chose to discipline them by impairing their membership, rather than by expelling them or fining them, does not transform lawful discipline into unlawful discipline.

Based on the above, we agree with the judge that the discipline was lawful. The next issue is whether union security could be enforced against those whose membership has been lawfully impaired. Because the Respondent's discipline of these members did not violate the Act, the members continued, as unit employees, to be required under the union-security agreement to satisfy the sole obligation a union may enforce under a union-security provision: ''the tendering of uniform initiation fees (if any) and dues.''[9] In so finding, we stress that the Union, as the unit's exclusive bargaining representative, has a duty of fair representation toward all unit employees, and thus must continue to represent the disciplined employees without hostility, discrimination, or arbitrary conduct and with complete good faith and honesty.[10]

We therefore conclude that the Respondent did not violate Section 8(b)(1)(A) of the Act by threatening to invoke the union-security clause against Gilbert and the three other employee-members if they ceased paying dues after the Respondent disciplined them. Accordingly, we shall dismiss the instant complaint.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and the complaint is dismissed.

[6] *Scofield v. NLRB*, 394 U.S. 423, 430 (1969).

[7] The Sec. 7 right of seeking access to the Board is fundamental in the sense that all others are dependent on it. If the employee cannot come to the Board, he cannot vindicate any of his rights.

[8] See *NLRB v. Marine & Shipbuilding Workers*, 391 U.S. 418 (1968); *Molders Local 125 (Blackhawk Tanning Co.)*, 178 NLRB 208 (1969).

[9] *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031, 1034 (1993). Member Devaney, who dissented in part on other grounds in *Paramax*, agrees with the *Paramax* majority's characterization of the union-security obligation and the duty of fair representation cited here.

No party has raised the issue of whether members whose membership rights have been impaired but who do not resign their membership may object to the expenditure of a portion of his/her dues on nonrepresentational activities. See *Communications Workers v. Beck*, 487 U.S. 735 (1988) (unions may not expend dues and fees collected under a union-security provision from objecting nonmembers on activities unrelated to their role as bargaining representative).

[10] Id. at 1033.

Gary M. Connaughton, for the General Counsel.
Michael Stapp, Esq. (Blake & Uhlig, P.A.), of Kansas City, Kansas, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Oakland, California, on February 20, 1990,[1] pursuant to an amended complaint issued by the Regional Director for the National Labor Relations Board for Region 32 on December 14, 1989, and which is based on a charge filed by James Gilbert (Gilbert or Charging Party) on October 6, 1989. The complaint alleges that International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (Respondent) has engaged in certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act).[2]

[1] All dates herein refer to 1988 unless otherwise indicated.

[2] Sec. 8(b)(1)(A) of the Act provides:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to

Issues

(1) Whether this case should be dismissed because Gilbert filed the unfair labor practice charge outside the applicable statute of limitations.

(2) Whether Respondent disciplined Gilbert and other alleged discriminatees because of their protected concerted activities.

(3) Whether Respondent unlawfully threatened to cause Kaiser to discharge the alleged discriminatees if they discontinued paying membership dues to Respondent.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of General Counsel and Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

Respondent admits that the Employer is a California corporation which manufactures, sells, and distributes cement and related products and has an office and place of business located in Permanente, California. Respondent further admits that during the past year, in the course and conduct of its interstate business operations, the Employer sold and shipped goods or provided services valued in excess of $50,000 directly to customers located outside the State of California. Accordingly, it admits and I find that the Employer is engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

Prior to April 1, 1984, Local 100 of the Cement, Lime, Gypsum and Allied Workers International Union (CL & G) represented certain employees at the Kaiser Cement Corporation. Other unions such as the Teamsters, Operating Engineers, and the Laborers, represented other employees at the same plant. The collective-bargaining representative for all employees represented by unions at Kaiser is the AFL–CIO Building Trades Council.

On or about April 1, 1984, CL & G merged with Respondent; Local 100 became Local D-100 of Respondent. The president of the Local both before and after the merger (1977–1988) was Charging Party James Gilbert, a Kaiser employee since 1951. Prior to April 1984, Gilbert and others in Local 100 had opposed the merger but, thereafter, opponents took no action to express disagreement with the merger until 1986.

In August 1986, Gilbert and other representatives of Local D-100 attended Respondent's convention. Based on events at the convention and the subsequent termination of longtime CL & G International representatives, Ken Weaver, Mike Philips, Jack Hammond, and Ernie Lamaro, Gilbert began to actively oppose Respondent during meetings of the Local and in other ways.

None of the terminated International representatives testified in this case. However, it appears that Weaver in particular had been a close professional and personal acquaintance of Gilbert. Moreover, Weaver had been involved in litigation on behalf of Local 100 against Kaiser and against other union locals who represented Kaiser employees. The termination of Weaver was followed not long after by Respondent withdrawing funding for the lawsuit in progress. Not long after this, the lawsuit collapsed. Gilbert's anguished letter of September 16, 1986, to Respondent's president, Charles W. Jones (G.C. Exh. 14), asking that the discharge of Weaver be reconsidered was unsuccessful.

During early 1987, Gilbert met with certain company officials to discuss the possibility of changing all 37 or 38 bargaining unit employees represented by Local D-100 into nonunion salaried positions. These negotiations led nowhere, and it is not clear whether Respondent or other members of Local D-100 knew about Gilbert's activities. However, this was not the first time such a move had been discussed.

A short while before the merger, Kaiser had proposed removing four bargaining unit jobs out of the unit and making them nonunion. These jobs were the control room operators whose positions were to be again included within a later proposed letter of understanding, as explained below. In any event, Gilbert presented the Company's premerger proposal to the membership for discussion and a vote, where it was soundly defeated. In presenting the proposal, Gilbert was acting within the scope of his position as president of Local 100 to present various proposals of Kaiser to clarify what in some cases was a ''grey area'' not specifically covered by the collective-bargaining agreement (G.C. Exh. 17).

In July, Gilbert prepared and circulated a petition among members of his local. The petition reads:

> As members of Lodge D-100, employed at the Kaiser Permanente Cement Plant, we do not want the Boilermakers International Union to represent us and request an election by the NLRB to chose a new International Union to affiliate with. [G.C. Exh. 15.]

Ultimately 37 out of 38 members signed this petition. Signers included a Respondent witness named James Ellsworth, who was elected president of the Local after Respondent disciplined and removed Gilbert as president for certain conduct not yet reported in these facts. Ellsworth explained his signa-

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prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

Sec. 157 of the Act further provides that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

ture on the petition by testifying that Gilbert had misled signers to believe that Respondent had not been doing enough for the local. This notion was based in part on the alleged failure of Weaver's replacement, John Holaday, to make a timely appearance in the plant. In his testimony, Respondent witness Holaday blamed his tardy appearance on Gilbert.

As he circulated this petition, Gilbert took no official position on the issue, but he conceded in his testimony that he had stated his position in favor of the petition to all members solicited to sign. Indeed, Gilbert signed his name on the first line of the petition. For reasons that do not appear of record, Gilbert did not submit this petition to Respondent.

The disaffiliation petition was followed in December by another petition first referred to in the record as a decertification petition, and later clarified on cross-examination of Gilbert to be a certification petition for a labor organization called the Independent Workers of North America (IWNA).[3] An official of this organization is Kent Weaver, former international representative of the CL & G fired by Respondent.

Weaver sent Gilbert a number of union authorization cards for Gilbert to distribute to members of Local D-100 and to solicit members' signatures. Gilbert returned a number of signed cards to Weaver. Ultimately, Gilbert withdrew the petition because he felt the multiunit bargaining unit at Kaiser made success unlikely.

Notwithstanding Gilbert's withdrawal of both petitions referred to above, sometime after he had been removed from his position as president of Local D-100, he convened a ''rump'' session of some members of the local. About 20 members voted for and about 7 against an affiliation with IWNA. There was no official recognition of these results.

2. The letter of understanding

As recited above, Gilbert and the other alleged discriminatees were disciplined for certain conduct. However, the parties to this case do not agree on what conduct was punished. For now, it suffices to say that the ostensible reason for the discipline involved the role of the alleged discriminatees in presenting the employer's proposed letter of understanding to the membership of Local D-100 for discussion and a vote.

On or about September 9, Gilbert presented this letter to the membership in a meeting long enough to accommodate both the day and evening shifts. No advance notice of the details of the letter was provided. In addition, Gilbert refused to provide copies of the letter to the membership. Instead, he purported to read the letter to the members and then led discussion on it. A faction of the membership, loyal to the Respondent, requested copies of the letter and a postponement of the vote for a few days while members discussed it and perhaps sought additional information. Gilbert denied all such requests and insisted on a vote then and there. Those members who were employed on the evening shift had to vote and leave without hearing the remarks of the majority of the members who were employed on the day shift and came to the meeting later.

The letter of understanding reads as follows (G.C. Exh. 16):

9/22/88

DRAFT
LETTER OF UNDERSTANDING

We have been engaged in discussions over the past several weeks concerning the evolution of and the need for changing the job responsibilities, functions, and authority of several classifications heretofore within the jurisdiction of the Cement, Lime, Gypsum and Allied Workers, Division of Boilermakers, International Local Lodge D-100 (CL&G). Specifically, we have discussed and reached agreement regarding the following classifications: Quality Control Analyst, Quality Control A, Quality Control B, Finish Miller, and Process Operator.

During our discussion, we have agreed that the changes have occurred and are necessary because of the changed nature of our business, increased competition based on quality, direct increased contact with customers, working conditions, and a need for more close direction of the manufacturing processes and the workforce. Within the Quality Control process at the plant, these changes mean that the people enjoy a greater community interest, and their functions are more aligned with the management of the operation. For many, if not all the same reasons, we have agreed that the Finish Miller and Process Operator classifications should be made supervisory. Therefore, the Company has restrucured [sic] our organizational chart and is prepared to assign the new job responsibilities, functions, and authority upon execution of this Agreement. It is understood and agreed that the effect of this agreement will be to remove those classifications listed above and all related work from the bargaining unit. Hereafter, the individuals selected for the Management/Supervisor positions created pursuant to this LOU, will be salaried or salaried (end of sentence missing from exhibit).

It is also agreed that when permanent vacancies occur in the management positions dealt with in this LOU, members of the CL&G will be given first consideration for promotion to such positions. Likewise, it is agreed that management may temporarily upgrade members of the CL&G to the management positions dealt with herein for purposes of training and/or coverage.

Any action by any federal agency, court, or arbitrator which materially affects this LOU as to the salaried status of the affected employees will render the Company's obligation to provide them with salaried compensation and benefits null and void, as if their status had never changed.

Agreed this ____ day of _____, 1988.

For Kaiser Cement Corporation For CL&G, D-100

All agree that the primary effect of this letter if it had been agreed to by the membership would have been to remove from the bargaining unit 17 jobs out of the 37 or 38 represented by Local D-100 (Total number of bargaining unit positions represented by all unions at Kaiser is 170–180). The 17 jobs would then have become salaried, supervisory positions under the complete control of Kaiser management.

[3] According to Gilbert, the IWNA is the old Cement, Lime & Gypsum Locals that had disaffiliated from Respondent and formed a new International Union (Tr. 48).

According to Gilbert, company officials drafted the letter. However, Gilbert testified the letter was drafted as a result of his initiating contact with Joe Hobby, the Employer's Industrial Relations Supervisor, with whom Gilbert had held prior discussions about taking all 37–38 bargaining unit positions into nonunit status. Gilbert held 2–3 meetings with Hobby, who did not testify, regarding the content of the 1988 letter of understanding. Because the company offered to take only about half of the bargaining unit jobs into salaried positions, Gilbert allegedly did not favor the end product. Nevertheless, Gilbert agreed to present it to the membership.

Gilbert's job was one of those included in the 17 jobs to be removed from the unit. In presenting the letter on September 9, Gilbert repeated what had been represented to him by Hobby, that pensions for supervisors were much more generous—about double—than those provided to bargaining unit employees. As for those members who might be reluctant to approve the letter, because unlike Gilbert, their jobs were not slated to be converted to management, Gilbert emphasized to them the commitment contained within the letter of understanding: that where later vacancies occurred in the 17 new management positions, bargaining unit employees would be considered on a preferential basis.

When all the votes were counted, the letter of understanding was defeated by a vote of 23 to 11.

The second alleged discriminatee is Donald Hall, a witness for General Counsel. A Kaiser employee for 38 years and financial secretary of Local D-100 between 1969–1988, Hall, like Gilbert, resented the termination of Weaver and other International representatives by Respondent. Hall signed the petition (G.C. Exh. 15) circulated by Gilbert in July to measure the sentiment for disaffiliating from Respondent.

On September 22, Hall attended the union meeting to discuss the letter of understanding presented by Gilbert. Hall testified he followed the lead of Gilbert at the meeting and took no public position on the letter.

The third alleged discriminatee is Joseph Gaxiola, also a witness for General Counsel.[4] Employed by Kaiser for 20 years and elected a trustee of Local D-100 for 4 years through 1988, Gaxiola attended the September 22 union meeting and participated in discussions. Because Gaxiola had to leave the meeting early to work the evening shift, he prepared a written vote on the letter of understanding which he then showed to one or more other members who had not yet voted. Gaxiola voted ''No'' on the letter of understanding.

About 2 weeks later, Gaxiola prepared a petition which he circulated to the local's members. The introductory paragraph reads as follows (G.C. Exh. 22):

> This petition is to determine the support of the members of Local D-100 on a Letter of Understanding that makes all classifications in D-100 salaried or salaried non-exempt.

This time Gaxiola signed in favor of the proposition,[5] but most other signers opposed the proposition. In preparing the petition, Gaxiola testified he acted on his own, and not as trustee of the local. Although he had been a secretary-treasurer of the Local for 13 years, Rose had not held that position or any position in the local for 10–12 years prior to 1988.

The final alleged discriminatee is Arthur Rose, a Kaiser employee for 39 years. Unlike the other alleged discriminatees, Rose had not been a current officer of Local D-100 during the times material to this case.

Rose attended the September 22 meeting and took a public vocal position in favor of the letter read by Gilbert. Rose argued that the jobs would be a good deal for the 17 incumbents. Because those remaining in bargaining unit positions were much younger than the incumbents, Rose continued, they would eventually succeed to the jobs, as the Company usually hires up through the ranks. Rose's belief that Kaiser would look first to bargaining unit employees to fill vacancies in the 17 exempt positions was based in part on a conversation he had with Hobby a few days before September 22, wherein Hobby assured Rose and repeated what was in the letter itself, that where possible, any openings down the line would be filled from Local D-100 members.

3. Respondent discipline of alleged discriminatees

On or about October 16, James Ellsworth, a Kaiser employee for 17 years, and current president of Local D-100 filed charges against the four alleged discriminatees. More specifically, Ellsworth charged as follows: that Gilbert ''bargained with company in order to disband the union and have the jobs into the salaried position'' (G.C. Exh. 2); that Hall, ''aided J. Gilbert and A. Rose in trying to get union members to vote into being salaried and breaking up union. Also did not notify members or International about J. Gilbert's illegal activities (G.C. Exh. 3); that Rose, abetted Jim Gilbert in trying to get the union members to vote to go salary and disband the Union. Didn't notify Union members or International about the illegal activities Jim was involved in.'' (G.C. Exh. 4); that Gaxiola ''circulated a petition asking union members if they wanted members to go to salaried positions.'' (G.C. Exh. 5).

On or about November 1, the four alleged discriminatees were notified of a hearing to be held on November 19 to adjudicate the charges filed by Ellsworth (R. Exhs. 1–4).

At the November 19 disciplinary hearing, International Representative Holaday acted as prosecutor and presented the evidence against the four alleged discriminatees. G. Ross Seaman, another International representative, acted as hearing officer and prepared a written report to the Respondent's International Executive Council which rules on intra-union charges. Called as a witness by Respondent in the instant case, Seaman testified that the four alleged discriminatees were charged only with activities in support of removing a number of persons from the bargaining unit. Seaman's report reads as follows:

[4] That portion of the transcript purporting to contain the testimony of Gaxiola is close to incomprehensible. The fault is not that of the court reporter. Because of language difficulties and/or a speech impediment, Gaxiola was barely an intelligible witness. He was warned repeatedly by the court reporter of the technical problems created by his manner of testifying (e.g., Tr. 135). Little or no improvement resulted from these admonitions. Apparently, the witness did the best he could and so have I in trying to ascertain what he said.

[5] Instead of affecting only 17 positions, Gaxiola's petition affected all Local D-100 positions. The purported linkage to a letter of understanding cannot be explained.

BEFORE THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS IRON SHIPBUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL–CIO

INTERNATIONAL EXECUTIVE COUNCIL

In the matter of:

Charges filed against James Gilbert, Arthur Rose, Donald Hall and Joseph Gaxiola of Local Lodge D-100 by James H. Ellsworth for alleged violations of Article XVII, Section 1(a), (e), (f), (h), (k), and (l) of the International Brotherhood Constitution.

Hearing Date: November 19, 1988, Los Gatos, California
Before: G. Ross Seaman, International Executive Council Hearing Officer

BACKGROUND

The issues in this case as contended by the charging party are that Mr. Gilbert bargained with the company for the purpose of removing certain classifications and jobs from the bargaining unit. He contends further that Mr. Rose and Mr. Hall aided and abetted Mr. Gilbert to this end by attempting to convince the membership to support a memorandum of agreement that was prepared by the company for that purpose. He also contends that Mr. Gaxiola prepared and circulated a petition that was intended to give added support to the memorandum of agreement.

INFORMAL HEARING

An informal hearing was held on November 19, 1988 commencing at approximately 8:30 A.M. The charging party offered to withdraw the charges against all of the charged parties in exchange for their resignation from office and the calling of an election to be held in December of 1988. This offer was declined by all of the charged parties. The charging party made a further offer of an unconditional withdrawal of the charges against Mr. Hall and Mr. Gaxiola as he felt theirs was a relatively minor role in the entire matter. This offer was rejected on the grounds that they felt they were innocent of any wrong and wanted to clear their names by way of a formal hearing.

FORMAL HEARING

A formal hearing was convened at approximately 1:30 P.M. on November 19, 1988. The charged parties objected to the holding of a formal hearing on this date on the grounds that they interpret Article XVII Section 2(b) to mean that they have an additional 15 days from the end of the informal hearing to prepare for a formal hearing. Mr. Gilbert asked if Kent Weaver would be allowed to represent the charged parties and was promptly denied his request. The hearing proceeded and was concluded at approximately 6:07 P.M.

FOOT NOTE

The charging party, Mr. Ellsworth indicated Mr. Hall and Mr. Gaxiola had been minor participants in this matter. In my observations of both hearings, I tend to agree with Mr. Ellsworth. [R. Exh. 6.]

On or about December 19, Respondent notified the alleged discriminatees of the dispositions of their cases:

(1) Gilbert found guilty of all charges; Punishment: suspension from office and ineligible to hold any elected or appointed office in Respondent for five years; Also for five years—prohibited from attending all Union meetings or functions; except a meeting at which a contract directly affecting him is to be voted upon [G.C. Exh. 6].

(2) Hall found guilty of all charges; Punishment: same as Gilbert except duration is three years rather than five [G.C. Ex. 7].

(3) Rose found guilty of three out of four charges; Punishment same as Gilbert except duration is two years [G.C. Ex. 8].

(4) Gaxiola found guilty of all charges; Punishment: same as Rose [G.C. Exh. 9].

All four letters above also informed Gilbert, Hall, Rose, and Gaxiola that Holaday would supervise the day-to-day administration of Local D-100 and election of Local Lodge officers.

In his testimony as a Respondent witness, Ellsworth described the 17 jobs which were the subject of the letter of understanding as quality control and computer operator type jobs. These positions, according to Ellsworth, were critical to operation of the plant in the event of a strike. Because management would control these jobs, lower skilled persons could be recruited to cross picket lines and keep the plant operating during a strike, thereby lessening the bargaining power of the Union.

4. Postdiscipline events

On or about April 24, 1989, Gilbert and the other alleged discriminatees sent the following letter to C. W. Jones, president of Respondent (G.C. Exh. 10):

Mr. C. W. Jones
International President
International Brotherhood of Boilermakers
753 State Avenue, Suite 570
Kansas City, Kansas 66101

Dear Sir:

In December of 1988 we, the undersigned, were suspended from holding offices and attending union meeting of the Boilermakers International.

We have been advised that we have been ''in effect suspended'' from the Union and are not required to pay union dues.

We have been keeping our dues current until we could contact you and get your confirmation. If you are in agreement, please advise us and also arrange for the union to refund our union dues retroactive to December 1988.

We are awaiting your reply. Thank you.

Sincerely,

/s/ James Gilbert	/s/ Don Hall
James Gilbert	Don Hall
/s/ Arthur Rose	/s/ Joe Gaxiola
Art Rose	Joe Gaxiola

About 1 month later, Jones wrote back (G.C. Exh. 11):

May 22, 1989

D100-88-1
D100-88-2
D100-88-3
D100-88-4

Mr. James Gilbert
Mr. Arthur Rose
Mr. Donald Hall
Mr. Joseph Gaxiola
c/o 1595 Laurelwood Rd., #28
Santa Clara, CA 95054

Dear Gentlemen and Brothers:

This will acknowledge receipt of your letter wherein you request clarification of whether or not you are required to continue to pay union dues as a result of penalties imposed under Article XVII.

Please be advised, although penalties were imposed subsequent to Article XVII Hearings, you were not suspended from membership. You are still required to pay monthly dues if you want to remain members in good standing of the International Brotherhood of Boilermakers.

Trusting you will be guided accordingly and, with best wishes, I am

Fraternally yours,

/s/ Charles W. Jones
Charles W. Jones
International President

On July 20, 1989 (misdated as 1988), Gilbert, Rose, Hall, and Gaxiola sent a second letter to Jones (G.C. Exh. 12):

Mr. Charles W. Jones
International President
Boilermakers Union
New Brotherhood Building
Kansas City, Kansas 66404

Dear Mr. Jones:

This letter is in response to your letter to us dated May 22, 1989.

Please explain what penalties might be imposed if we discontinued paying union dues to Local D-100.

We would appreciate your response.

Sincerely,

/s/ Jim Gilbert	/s/ Don Hall
Jim Gilbert	Don Hall
/s/ Art Rose	/s/ Joe Gaxiola
Art Rose	Joe Gaxiola

Jones responded on August 7, 1989 (G.C. Exh. 13):

D100-88-1
D100-88-2
D100-88-3
D100-88-4

Mr. James Gilbert
Mr. Arthur Rose
Mr. Donald Hall
Mr. Joseph Gaxiola
c/o 1595 Laurelwood Road #28
Santa Clara, CA 95054

Dear Gentlemen and Brothers:

This is in response to your letter dated July 20, 1989.

The existing contract between the Company and Local Lodge D100 contains a union security clause. Should you discontinue paying union dues, the Union would have no choice but to notify the Company and you would no longer be allowed to work at the plant.

Trusting you will continue to maintain your membership in Local Lodge D100, and with best wishes, I remain

Fraternally yours,
/s/ Charles W. Jones
Charles W. Jones
International President

Monthly dues for all four members amounted to $32.50 per month. Only Gilbert actually stopped paying dues. He first testified that he fell behind in the payment of his dues (Tr. 42); later, Gilbert testified that he took the position that he didn't have to pay dues on the grounds he had been suspended from the Union. So he didn't pay for about 2 months (Tr. 43). Then on about September 30, 1989, John Morrison, a member of Local D-100 associated with Ellsworth, wrote a letter to Pete Horton, the industrial relations supervisor at the plant. In this letter, Morrison asked that article 2, section B of the contract be enforced against Gilbert (G.C. Exh. 20). That is, Morrison was asking that Gilbert be dismissed for nonpayment of dues. Instead of dismissing Gilbert, Horton called him into his office and showed him Morrison's letter. Gilbert promised to and did in fact pay all union dues then in arrears and his job security was not affected.

B. *Analysis and Conclusions*

1. The statute of limitations issue

In its answer to amended complaint and notice of hearing, Respondent raised an affirmative defense, contending ''the Amended Complaint should be dismissed, because the unfair labor practice charge was filed outside the applicable statute of limitations provided for in 29 U.S.C. Sec. 160(b)'' (G.C. Exh. 1(h)). Respondent reiterated its position in its opening statement at hearing (Tr. 17). Because this issue was raised in an appropriate manner, it is puzzling to say the least—and annoying—that neither side had seen fit to address the statute of limitations in its brief.

In *Nickles Bakery of Indiana*, 296 NLRB 927 (1989), the Board had occasion to review basic law regarding Section 10(b) of the Act:

> In considering the general sufficiency of a charge to support an allegation in the complaint, the Board has

generally required that the complaint allegation be related to and arise out of the same situation as the conduct alleged to be unlawful in the underlying charge, although it need not be limited to the specific violations alleged in the charge.[3] This requirement is derived from Section 10(b) of the Act, which provides in pertinent part as follows:

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have the power to issue and cause to be served upon such person a complaint *stating the charges in that respect* . . . . [Emphasis added.]

The Supreme Court in *NLRB v. Fant Milling Co*., 360 U.S. 301, 309 (1959), in discussing the Board's authority to discharge its duty of protecting public rights, held that a complaint alleging violations not specifically alleged in the charge is proper if the matters asserted in the complaint ''are related to those alleged in the charge and . . . grow out of them while the proceeding is pending before the Board.'' Consistent with *Fant Milling*, the Board has long required a sufficient factual relationship between the specific allegations in the charge and the complaint allegations.[4]

. . . .

In *Redd-I, Inc*., 290 NLRB 1115 (1988), the Board held that in deciding whether complaint amendments are closely related to charge allegations, it would apply the closely related test, comprised of the following factors. First, the Board will look at whether the otherwise untimely allegations involve the same legal theory as the allegations in the pending timely charge.[5] Second, the Board will look at whether the otherwise untimely allegations arise from the same factual circumstances or sequence of events as the pending timely charge. Finally, the Board may look at whether a respondent would raise similar defenses to both allegations. Id. at 1118[6] Although the facts of *Redd-I* involved a complaint amendment, the precedent relied on in *Redd-I* applies a similar closely related requirement to both initial complaints and amended complaints. See particularly *NLRB v. Dinion Coil Co*., 201 F.2d 484, 491 (2d Cir. 1952), discussed in *Redd-I*, supra at 1116.

[3] *Stainless Steel Products*, 157 NLRB 232, 234 (1966); *El Cortez Hotel*, 160 NLRB 1442, 1446–1447 (1966), affd. 390 F.2d 127 (9th Cir. 1968).

[4] See *Red Food Store*, 252 NLRB 116 (1980), and cases cited therein.

[5] In determining whether essentially similar legal theories underlie different allegations, we noted in *Redd-I* that usually the same section of the Act will be the basis for both the timely and untimely allegations. Id. at 1118. However, it is not necessary that the same actions of the Act be invoked. Thus, we note that in *Whitewood Oriental Maintenance Co*., 292 NLRB 1159, 1169 (1989), the Board found that even though the otherwise untimely amendment invoked Sec. 8(a)(2) of the Act and the timely charge referred to Sec. 8(a)(5), the allegations satisfied this relatedness requirement because they were predicated on essentially the same legal theory. See also *Proctor & Gamble Mfg. Co. v. NLRB*, 658 F.2d 968, 984–985 (4th Cir. 1981), cert. denied 459 U.S. 879 (1982) (8(a)(3) allegation found closely related under *Fant Milling*, supra, to 8(a)(5) allegations).

[6] In doing so, however, the Board will not rely on a respondent's mere claims of different unlawful reasons for taking different action alleged in the complaint as unlawful, but will look to whether the timely and otherwise untimely allegations allege the same unlawful object. See *Davis Electrical Constructors*, 291 NLRB 115, 116 fn. 9 (1988).

The charge in this case was filed on October 6, 1989, and alleged that Respondent violated the Act by threatening to have Kaiser discharge the alleged discriminatees if they stopped paying union dues, ''despite the Union's failure to offer said employees membership under the same terms as other employees'' (G.C. Exh. 1(a)). Based on this charge, the complaint alleges that Respondent's threat to enforce the union-security clause, was unlawful.

It is also alleged in the complaint that on December 17, the alleged discriminatees were disciplined for engaging in protected concerted activities. The first allegation is within and the second allegation is outside the 6-month statute of limitations. The issue then is whether the untimely allegations of the complaint are closely related to the timely allegation contained in the charge. To answer this question, I turn to those factors from *Redd-I, Inc*., supra, and apply them to the present case.

(a) *Does the untimely allegation involve the same legal theory as the allegations in the timely charge?*

To answer this question, I need look no further than General Counsel's brief, p. 17. There, General Counsel makes clear that as a result of the timely charge, he raises a ''broader theory, [whether] a union security clause can be enforced against an employee, whose membership rights are substantially reduced, for whatever reason, protected or otherwise.'' General Counsel's theory for the untimely allegation is that the alleged discriminatees were disciplined for engaging in protected concerted activities. I find sufficient connection between the two theories as to satisfy the first legal test.

(b) *Does the untimely allegation in the complaint arise from the same sequence of events as the pending timely charge?*

As shown by the facts, this question must be answered in the affirmative, and further discussion is not warranted.

(c) *Will Respondent raise similar defenses to both allegations?*

Again, I find the answer to be in the affirmative. Respondent's basic theory of its defense is that at all times material to its defense, Respondent was acting within the scope of its legal authority. I will address that contention below on the merits. For now, I find that this case should not be dismissed in whole or in part on statute of limitations grounds. See *Kelly-Godwin Hardwood Co*., 269 NLRB 33, 36–37 (1984).

2. Did Respondent discipline the alleged discriminatees for protected concerted activities?

I begin with the relevant provisions of Respondent's constitution which were alleged to have been violated. As noted above, Gilbert was find guilty of violating art. xvii, secs. 1(c), (e), (f), (k), and (l) which reads as follows (R. Exh. 5):

> Section 1. The basis of charges against officers or members of a subordinate body, against officers of the

> International Brotherhood or against a subordinate body itself shall include, but shall not be limited to, any one or more of the following offenses:
>
> (a) violation of any provision of this Constitution or the By-Laws of a subordinate body or failure to perform duties or functions specified therein;
>
> (e) engaging in any activity or course of conduct contrary or detrimental to the welfare or best interest of the International Brotherhood or of a subordinate body;
>
> (f) the commission of any unlawful, dishonest, dishonorable or discreditable act in connection with union duties or responsibilities;
>
> (k) engaging in or fomenting any acts or course of conduct which are inconsistent with the duties, obligations and fealty of the members of a trade union and which violate sound trade union principles or which constitute a breach of any existing collective bargaining agreement;
>
> (l) failure to exercise responsibility toward the International Brotherhood as an institution or engaging in conduct which would interfere with the International Brotherhood's performance of its obligations . . . .

Hall and Rose were found guilty of violating sections l(e), (k), and (l) and Gaxiola was found guilty of violating Secs. l(e) and (k) of the same article.

A union constitution has beer described as a ''fundamental agreement of association.'' *Plumbers v. Plumbers Local 334*, 452 U.S. 615, 619 (1981). Both the Board (*Telephone Traffic Union*, 287 NLRB 998, 1002 (1986)) and the courts (*Nelson v. Iron Workers*, 131 LRRM 2025, 2029, and cases cited therein (D.C.D.C. 1988); *Stage Employees IATSE Local 776 v. Stage Employees IATSE Local 695*, 123 LRRM 2784, 2785 (9th (9th Cir. 1986)) have held that a union's interpretation of its constitution is entitled to considerable deferance.

With these preliminary principles of law in mind, I turn to the record. There General Counsel contends that Gilbert was disciplined, at least in part, for certain activities different from those actually charged: for example, circulating a petition opposing Respondent's representation and supporting IWNA, a rival union. These activities are protected under the Act. Cf. *Service Employees Local I-J (I. Shor Co.)*, 273 NLRB 929 (1984). However, I agree with Respondent (Br. pp. 10–12), that General Counsel has failed to prove a nexus between Gilbert's prior activities and the discipline at issue. *Sheet Metal Workers Local 22 (Miller Sheet Metal)*, 296 NLRB 1146, 1147 (1989). Accordingly, the issue is whether Gilbert, Hall, and Rose were properly disciplined for presenting the letter of understanding on September 22, and whether Gaxiola was properly disciplined for preparing and circulating a subsequent petition to remove all the members of D-100 from the bargaining unit and place them in salaried positions.

In *Sheet Metal Workers Local 22*, supra at 1147–1148, the Board stated:

> The Board and courts have long recognized that Congress in enacting Section 8(b)(1) did not intend to regulate the internal affairs of unions, and that the proviso to that section preserves the rights of unions to impose fines as well as to expel members.[7] As the Board has stated:[8]
>
> The Supreme Court in *Allis-Chalmers* recognized that the right of collective bargaining is a paramount policy of national labor law and that, in order for a union to fulfill this obligation, it must be able to promulgate its own rules and have the right to impose reasonable discipline on members who do not obey such rules. The Court further found that integral to this policy is the union's right to protect itself against the erosion of its status of collective-bargaining representative by reasonably disciplining members for violating internal regulations. [Footnote omitted.]
>
> The Supreme Court, in the seminal case of *Scofield v. NLRB*, observed:[9]
>
> . . . Sec. 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

[7] *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 191–192 (1967).
[8] *Meat Cutters Local 593 (S & M Grocers)*, 237 NLRB 1159, 1160 (1978).
[9] *Scofield v. NLRB*, 394 U.S. 423, 430 (1969).

In all those cases where the Board has found union discipline to have violated Section 8(b)(1)(A) of the Act, the discipline has impeded union member access to the Board's processes. See, for example, *Sheet Metal Workers Local 22*, supra. However, the union discipline in the present case has nothing at all to do with restricting access to the Board's processes. Rather, it has to do with Respondent's right to protect itself against the erosion of its status as collective-bargaining representative.

I note the Board's decision in *Buffalo Newspaper Guild Local 26 (Buffalo Courier Express)*, 265 NLRB 382 (1982). In that case, the union disciplined its members for filing a unit clarification issue with the Board. The intended result would have been a Board determination that certain individuals be excluded from the bargaining unit due to their supervisory status (at 383). While the Board admitted that such an action was against a union's interest, the member was immune from internal union discipline, because of an overriding public policy in permitting access to the Board's processes. The Board found that the union violated Section 8(b)(1)(A) by disciplining its member.

In the instant case, by comparison, the result of Gilbert, Rose, and Hall's activities would have been to remove about half of the bargaining positions into salaried and supervisory positions. The result of Gaxiola's activities would have been to remove all the bargaining unit positions into salaried positions. It is difficult to imagine any greater erosion of Respondent's collective-bargaining status than what may have been caused by the alleged discriminatees.[6]

The case of *Meat Cutters (S & M Grocers)*, 237 NLRB 1159 (1978), supports Respondent's theory. In that case, the

[6] In focusing purely on the numbers at this point, I have not forgotten the testimony of Ellsworth that some or all of the 17 positions were especially critical to Respondent's bargaining power. I credit Ellsworth's testimony and find it supports Respondent's theory.

Board dismissed a case alleging that Section 8(b)(1)(A) of the Act had been violated. The issue presented involved reconciling a union's right to solidarity during an organizing drive with the public policy of employees being free of coercion or restraint in choosing their collective-bargaining representative. (Union had threatened to discipline members who did not support or participate in or who actively opposed the organizing drive at the Employer's store.) In dismissing the case, the Board held that the Union's threat of a fine was aimed not at deterring members from invoking the Board's procedures, but at requiring its members to support the organizational efforts.

In sum, I find that General Counsel has failed to prove a prima facie case that Respondent violated Section 8(b)(1)(A) of the Act. Compare *NLRB v. Iron Workers (Walker Construction Co.)*, 130 LRRM 2585 (5th Cir. 1983). Instead, I find that in enforcing the various provisions of its constitution quoted above, Respondent was vindicating a legitimate union interest—to prevent erosion of its status as collective-bargaining representative. In addition, I find that the provisions were reasonably enforced against union members who are free to leave the union and escape the rule.[7]

Because I have found that the alleged discriminatees were not disciplined for the exercise of any rights protected by Section 7 of the Act, the invoking of a lawful union-security clause is not unlawful. Accordingly, the cases cited by General Counsel at p. 8 of his brief, e.g., *Steelworkers Local 4186 (McGraw Edison Co.)*, 181 NLRB 992 (1970), do not apply to the instant case. In any event, it was the alleged discriminatees who first raised the issue regarding enforcement of the union-security clause. I can find no reason why, under the facts and circumstances of this case, Respondent's written answer violated the Act.

In this case only Gilbert failed to pay his union dues for 2 months. It is unclear whether he was unable or unwilling to pay these dues. Pursuant to a valid union-security agreement, a union may cause an employr to discharge an employee who by nonpayment of dues fails to maintain union membership. 29 U.S.C. § 158(a)(1) (1976). *Sheet Metal Workers Local 355 v. NLRB*, 716 F.2d 1249, 1254 (9th Cir. 1983). Before a union may do this, however, certain procedural formalities must be observed. In this case, as soon as Gilbert was counseled about his obligations, under the lawful union-security clause, he paid his back dues, and so far as the record shows is now current.[8]

As an alternative argument, General Counsel contends (Br. p. 17) that even if the activities of the alleged discriminatees for which they were disciplined were not protected, their membership rights have been so substantially reduced that enforcement of the union-security clause against them becomes unlawful. Not surprisingly, General Counsel finds no cases to support this contention.

The basic flaw in General Counsel's argument is that it presents Respondent or any labor organization with a Hobson's choice: either forgo its right to lawfully discipline its members, thereby rendering the proviso to Section 8(b)(1)(A) a nullity, or relinquish its right to enforce a lawful union-security clause, thereby ultimately self-destructing without the dues of disciplined members. Moreover, General Counsel's positions, if implemented, would induce members who for financial or philosophical reasons, are unwilling to pay dues in the first place, to subject themselves to union discipline, so they would be ''punished,'' by not having to pay union dues, although they would continue their employment. General Counsel's arguments fall of its own weight and further discussion is unwarranted.

For the reasons stated above, I will recommend to the Board that this case be dismissed.

CONCLUSIONS OF LAW

1. The Employer, Kaiser Cement Corporation, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

It is recommended that the complaint be dismissed in its entirety.

---

[7] That the alleged discriminatees may be members of Respondent pursuant to a union-security clause does not affect their ability to resign, albeit they will still be required to meet their financial obligations thereunder. *Meat Cutters*, supra, 237 NLRB 1159, 1161 fn. 7.

[8] I find that Respondent met its fiduciary obligations to deal fairly with its members. Respondent gave the alleged discriminatees reasonable notice of their dues-related obligations and an opportunity to make good any delinquency. *Teamsters Loca] 122*, 203 NLRB 1041 (1973), enfd. without opinion 502 F.2d 1160 (1st Cir. 1974). And Respondent properly specified that discharge would result from a failure to pay. *Western Publishing Co*., 263 NLRB 1110 (1982).

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.